Remarks

I. Status of Claims

Claims 1-3, 5-10, 12-14, 16-22, 24-49 are pending.

Claims 1-3, 5-10, 12-14, 16-22, 24-37, and 44-49 stand rejected.

Claims 38-43 are objected to.

II. Claim Amendments

Claims 16-19, 25-26, 33-39, and 44-48 are cancelled in this amendment.

Claims 38 and 39, although objected to, are also cancelled in this amendment.

Claim 40 has been re-written in independent form including all limitations of the base claim and any intervening claims.

III. Claim Rejections -- 35 U.S.C. §102

Claims 33-37 and 44-48 are rejected under 35 U.S.C. §102(b) as being anticipated by Uotila, USPN 5,310,277, hereinafter referred to as **Uotila**.

Claims 33-37 and 44-48 are cancelled under this paper.

IV. Claim Rejection -- 35 U.S.C. §103

Claims 1-3, 5-10, 12-14, 16-22, 24-32, and 49 are rejected under 35 U.S.C. §103(a) as being unpatentable over **Uotila** in view of Terio, USPN 4,780,020, hereinafter referred to as **Terio**.

The references do not teach or suggest all the claim limitations as amended. When evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. MPEP §2143.03 states:

> To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.

Because from the facts derived from the references, as set forth below, the references do not teach or suggest all of the claim limitations as amended, and thus, the rejection is unsupported by the art and should be withdrawn.

It is respectfully noted that independent claims 1, 10, 14, and 49 have been amended to include a negative limitation whereby the anchors or anchoring means do not support the net or means for receiving and retaining in a vertical position. Claims 2-3, 5, 7-9, and 29 are dependent on claim 1. Claims 12-13 and 30 are depending on claim 10. Claims 20-21 and 31 are depending on claim 14. A first sacrificial panel or a first and second sacrificial panel supplies the supporting function. Therefore, in the Applicants' design, vertical posts are not required to support their net or means for receiving and restraining. Conversely, **Terio** only teaches and suggests supporting his cable network via a plurality of I-beam posts. **Uotila** only teaches and suggests supporting his net via a plurality of vertical supports in the form of posts (ref: '277, FIGS. 1, 2, and 4). The Applicants' teaching is a novel and unique design that avoids the necessity of vertical posts that can reduce the effectiveness of a decelerating-limiting roadway barrier because said vertical supports can serve as impediments to controlled deceleration. For example, if a moving vehicle impacted the I-beam posts as taught by **Terio**, the controlled deceleration means taught by the Applicants would not be activated. Rather, the I-beam posts would serve to stop the moving vehicle almost immediately. Thus, the Applicants' design allows for their barriers to be placed end-to-end in a seamless manner

wherein an impact at any point in the barrier would activate the controlled deceleration means. In short, neither **Terio** nor **Uotila** teach or suggest the Applicants' elegant design.

Independent claim 22, of which claims 24 and 27-28 are dependent on, has been amended to contain a negative limitation such that no other vertical support is required in addition to the first and second sacrificial panel. As stated above, neither **Terio** nor **Uotila** teach or suggest the aforementioned negative limitation.

The Applicants also respectfully yet strongly traverse the Examiner's statement on page 5 of the February 15, 2005 office action that "The panels(s) (40) of Terio are capable of extending alongside the roadway and have means for holding up the net in a vertical position, s*ince the panels must somehow be fixed to the net* and thereby inherently are a means for holding up the net." (emphasis added) First, FIGS. 1, 3, and 11 of **Terio** clearly illustrates how **Terio**'s cable network is supported by the I-beam posts (1), a block of crushable aluminum honeycomb material (6), a plate (7) on the outer face of said honeycomb material, and a pipe (8) resting on the plate (ref: '020, FIGS. 1, 3, and 11, and Col. 2, lines 43-47). Second, nowhere in **Terio** is there a teaching or suggestion that "the panels must somehow be fixed to the net." Third, **Terio**'s panels are supported by the combination of a plurality of I-beam posts, blocks, plates, and pipes and therefore **Terio**'s cable network does not need to be fixed to **Terio**'s panels. Please note that FIG. 2 of **Terio** clearly illustrates how **Terio**'s cables are installed inside the ends of each I-beam post and the panels logically fit on the external surface of each I-beam post end in FIG. 1. Fourth, **Terio**'s panels are clearly optional. (ref: discussion in '202 Col. 4, line 67 through Col. 5, line 1) Hence, if the panels are optional, how can the Examiner state that the panels must somehow be fixed to the net (i.e., cable network)? Therefore, the Examiner's statement above is erroneous and respectfully traversed.

The Applicants have also amended all the applicable independent claims to include a limitation that sandwiching the net or means for receiving and retaining between a first and second sacrificial panel comprises a means for supporting or holding up the net or means for receiving and retaining in a vertical position. These amendments specifically address the Examiner's concern on page 16, first paragraph in the February 15, 2005 office action. Applicants also traverse the Examiner's statement on page 16, first paragraph that " . . . the panel of Terio, which is somehow attached to the net barrier . . ." As stated *supra*, the panel of **Terio** is not "somehow attached to the net barrier." FIGS. 1, 2, 7 and 8 of **Terio** clearly illustrates how his cable network is attached to a combination of a plurality of I-beam posts, blocks, plates, and pipes and therefore does not require an attachment to **Terio**'s panels for support. **Terio** is quite clear that the purpose of his panels is decorative in nature. Nowhere does **Terio** teach or suggest a structural nexus between his panel and his cable network. Further, it is obvious that **Terio**'s cable network depends on his I-beam posts and pipes to structurally hold his cable network in a vertical position (i.e., a panel would not support **Terio**'s cable network in a vertical position and any argument that the panel inherently would do so is clearly erroneous). **Terio**'s cable network is not a low-weight, interwoven mesh fabric. **Terio**'s cable network is a heavy, thick cable that is wrapped several times around I-beam posts and pipes. Stating that such a heavy, thick cable can be supported by a decorative panel is 1) not based on engineering common sense and 2) would render **Terio**'s cable inoperable for its intended purpose because there would not be the structural basis to stop a moving vehicle in its tracks (i.e., the cable must be connected to some kind of anchor).

Therefore, the Applicants traverse the Examiner's rejections and respectfully argue that a *prima facie* case of obviousness has not been established.

V. Conclusion

In view of the remarks and amendments, it is submitted that the subject application now stands in a condition for allowance.

The Examiner is invited to phone Mr. Theodore Ro, attorney for Applicant, 281-244-7148, if in her opinion such a phone call would serve to expedite the prosecution of subject patent application.

Respectfully submitted,

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